

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

WILLIAM APODACA-FISK

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VS.

CASE NO. 3:19-CV-259-DCG

GREG ALLEN ET AL

PLAINTIFF'S OPPOSED RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff William Apodaca-Fisk (“Plaintiff”), who files this, his Rule 60(b) Motion for Relief from Judgment, and would respectfully show unto the Court as follows:

1. In late December of 2020, undersigned counsel was contacted by Millie Thompson, former counsel for Plaintiff William Apodaca-Fisk, requesting that he take over as lead counsel in this lawsuit for Plaintiff because Ms. Thompson had been elected to serve as a state judge and thus could no longer remain on as lead counsel for Plaintiff.
2. At that time, undersigned counsel believed he was already admitted to practice and in good standing in the Western District of Texas. Mr. Connolly is admitted in all three other Federal Districts in Texas and had been admitted to appear *pro hac vice* on another case in the Western District of Texas – Austin Division in 2018.
3. In January of 2021, undersigned counsel was advised that he was not currently admitted to practice in the the Western District and would need to apply to be admitted *pro hac vice* for this lawsuit.
4. In applying to be admitted *pro hac vice*, undersigned counsel was under the mistaken belief

that he had to simultaneously file to be fully admitted to the Western District on the date he filed his Motion to Appear Pro Hac Vice. Paragraph 9 of the Application to be Admitted Pro Hac Vice states “Applicant will file an Application for Admission to Practice before the United States District Court for the Western District of Texas, if so requested; or Applicant has co-counsel in this case who is admitted to practice before the United States District Court for the Western District of Texas.” [emphasis added].

5. Undersigned counsel misread the aforementioned statement with respect to the “if so requested”. Thus, undersigned counsel mistakenly believed he had to apply to be admitted to appear *pro hac vice* contemporaneously with his Application to be Admitted to the Western District of Texas.

6. The Application to be Admitted to the Western District of Texas requires two reference letters from attorneys admitted in the district. Moreover, said letters cannot be copies – only originals with pen signatures are accepted. It took approximately two weeks for undersigned counsel to obtain the reference letters.

7. Thereafter, on January 29, 2021, undersigned counsel mailed to the Clerk his Application to be Admitted to the Western District of Texas, along with his Application to be Admitted *Pro Hac Vice* for this case.

8. On February 2, 2021, the Court Granted undersigned counsel’s Motion to Appear *Pro Hac Vice*. Undersigned counsel received notice of the Court’s Order (Document Number 42) at his current and correct email address of kjc@connollylaw.com.

9. That same day, undersigned counsel also received the parties’ Joint Motion to Extend Scheduling Order Deadlines (Document No. 43) at his current and correct email address of kjc@connollylaw.com.

10. However, at some time between February 2, 2021 and February 5, 2021, undersigned counsel's email address for service in this case reverted from his current and correct email address (kjc@connollylaw.com) to an old email address (kjc@dc-lawgroup.com) from a prior law firm undersigned counsel left approximately two (2) years ago. Undersigned counsel cannot explain why this change of service email addresses occurred from his current and correct email address to the prior and no longer valid email address.

11. Accordingly, undersigned counsel did not receive the Court's February 5, 2021 Order to Show Cause because it was mailed to the no longer valid email address. *See* Electronic Service of Document No. 44, attached hereto as Exhibit "A."

12. Likewise, undersigned counsel did not receive Document No. 45, nor did undersigned counsel receive Document No. 46, which was the Court's February 22, 2021 Final Judgment Dismissing Without Prejudice this Case. *See* Electronic Service of Document No. 45, attached hereto as Exhibit "B" and Electronic Service of Document No. 46, attached hereto as Exhibit "C."

13. Undersigned counsel only became aware of this case's dismissal when he attempted to file an amended petition just prior to the deadline to file amendments to pleadings in March 2021.

14. Undersigned counsel's failure to receive notice of the Court's February 5, 2021 Order to Show Cause was the result of mistake, inadvertence, surprise, or excusable neglect – namely that the email address for service was changed from his current and valid email address to an old and no longer valid email address.

15. This Motion is filed within a reasonable time, and within the one-year limitation set forth in Rule 60(c)(1) of the Federal Rules of Civil Procedure.

16. Undersigned counsel sincerely apologizes to the Court, the Court's staff, and counsel for Defendants in this matter for said mistake, inadvertence, surprise, or excuseable neglect.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff William Apodaco-Fisk prays that the Court GRANT this Rule 60(b) Motion for Relief from Judgment, the Court Vacate its February 16, 2021 Final Judgment Dismissing Without Prejudice this Case, the Court reinstate this case on the Court's Docket and allow Plaintiff seven (7) days leave (from the date the Court rules on this Motion) to amend Plaintiff's Petition and to file a responsive brief in compliance with the Court's December 21, 2020 Order, the Court direct the Court Clerk to issue a new Docket Control Order, and such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

THE CONNOLLY LAW FIRM PLLC

/s/ Kevin J. Connolly

By: _____

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served in compliance with the Federal Rules of Civil Procedure on this, the 9th day of April 2021.

*/s/****Kevin J. Connolly***

KEVIN J. CONNOLLY

CERTIFICATE OF CONFERENCE

Undersigned counsel hereby certifies that he conferred with Evan Reed and Jeep Darnell in late March 2021 regarding the filing of this Motion and the relief sought herein, and that both Evan Reed and Jeep Darnell are opposed to this Motion and the relief sought herein.

*/s/****Kevin J. Connolly***

KEVIN J. CONNOLLY